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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA AT ANCHORAGE

Case No. _____

COMES NOW Rockhill Insurance Company, by and through counsel, and for its complaint, states and alleges as follows:

1. Rockhill Insurance Company is an Arizona corporation with its principal place of business in the State of Missouri.

2. Boretide Consulting, LLC is, on information and belief, an Alaska corporation with its principal place of business in the State of Alaska. Prior to its incorporation in 2010, the business operated as Boretide Consulting, a partnership.

3. Thor Kallestad, an Alaska resident, is a member of Boretide Consulting, LLC. Prior to the business's incorporation, Thor Kallestad was a partner in Boretide Consulting.

4. Greg Christensen, an Alaska resident, is a member of Boretide Consulting, LLC. Prior to the business's incorporation, Greg Christensen was a partner in Boretide Consulting.

5. Native Village of Port Heiden is an Alaska Native Village, based at Port Heiden, Alaska.

II. JURISDICTION AND VENUE

6. Under 28 U.S.C. § 1332, this court has jurisdiction over the complaint because complete diversity of citizen exists between Rockhill Insurance Company and all defendants, and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

III. GENERAL ALLEGATIONS

7. Plaintiff Rockhill Insurance Company issued a policy of insurance to Boretide Consulting, LLC with a policy period from July 13, 2010 to July 13, 2011, and designated policy no. R PKG E 0004277-00 ("Policy").

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8. The Policy included coverage a commercial general liability form that provided coverage for "bodily injury" and/or "property damage," a professional liability coverage form, and a contractor's pollution liability coverage form.

9. On or about May 25, 2010, the Native Council of Port Heiden entered into a contract with Boretide Consultant, LLC. Boretide Consultant, LLC, agreed to provide professional oversight services in connection with a project to excavate contaminated soil.

10. Boretide Consulting, LLC in fact performed professional services in furtherance of this contract.

11. Specifically, Boretide Consulting began its oversight of soil testing and excavation in August of 2011.

12. Boretide Consulting, LLC completed its operations for Native Council of Port Heiden in September of 2011.

13. An attorney for Native Council of Port Heiden sent a letter dated February 2, 2012 to Boretide Consulting, LLC, Greg Christensen and Thor Kallestad informing each recipient that it may bring a claim "for damages arising out of Boretide's performance of its duties owed to Port Heiden" pursuant to "the professional services agreement between the Native Village of Port Heiden and Boretide."

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14. This February 2, 2012 letter was the first notice to Boretide Consulting, LLC, Greg Christensen and/or Thor Kallestad that the Native Council of Port Heiden was considering a claim against them.

15. The Native Village of Port Heiden filed a complaint against Boretide Consulting, LLC, Thor Kallestad, and Greg Christensen dated August 20, 2012, in the Superior Court for the State of Alaska, Third Judicial District at Naknek, Case No. 3AN-12-0019 CI. The complaint alleged that, due to wrongful action or inaction by the defendants, the State of Alaska, Department of Environmental Conservation, required the Native Village of Port Heiden to remove PCB contaminated soil from the Port Heiden landfill "at enormous cost and expense." The lawsuit seeks to recover such damages from Boretide Consulting, LLC, Thor Kallestad and Greg Christensen under theories denominated breach of contract; strict liability for the release of hazardous substances; and negligence.

16. The Native Village of Port Heiden does not allege that any person(s) suffered bodily injury, sickness, or death as a result of the soil testing.

17. Boretide Consulting, LLC did not tender either the letter or lawsuit to Rockhill Insurance Company for a defense and/or indemnity under the Policy until early 2012.

18. Rockhill Insurance Company has agreed, under reservations of rights, to defend Boretide Consulting, LLC, Thor Kallestad and Greg Christensen in the lawsuit brought against them by the Native Village of Port Heiden.

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19. The commercial general liability form, providing coverage for bodily injury and property damage, does not apply to the claims asserted in the Village of Port Heiden's complaint because that complaint does not allege bodily injury or property damage.

20. Further, the bodily injury and property damage liability coverage does not apply to the claims in the Native Village of Port Heiden's complaint because the relevant conduct occurred after the expiration of the Rockhill Insurance Company policy.

21. The bodily injury and property damage liability coverage does not apply to the claims in the Native Village of Port Heiden's complaint because any alleged damages to the Native Village of Port Heiden occurred after the expiration of the Rockhill Insurance Company policy.

22. The bodily injury and property damage liability coverage does not apply to the claims in the Native Village of Port Heiden's complaint because the damages alleged by the Native Village of Port Heiden in its complaint fall within the terms of the Total Pollution Exclusion Endorsement, inasmuch as the damages relate to the disbursement of contaminated soil handled by Boretide, as well as operations to test certain premises for pollutants.

23. Moreover, to the extent the allegations of the Village of Port Heiden's complaint seek damages in any way arising out of inaccurate or negligent soil sampling, such allegations are not covered by the Rockhill Insurance Company

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commercial general liability form because such allegations fall within the Total Pollution Exclusion Endorsement and/or the Exclusion-Testing or Consulting Errors and Omissions Endorsement.

24. The Professional Liability coverage provided "claims made" coverage, which applied only if a claim is made against the insured during the policy period.

25. No claim was asserted by the Native Village of Port Heiden against Boretide Consulting, LLC, Thor Kallestad and/or Greg Christensen before July 13, 2011.

26. Moreover, Boretide Consulting, LLC, Thor Kallestad and/or Greg Christensen did not notify Rockhill Insurance Company of the claim until early 2012, well after the expiration of the Policy.

27. The contractor's pollution liability coverage included Exclusion Q, which provided that coverage did not apply to damages "arising out of the rendering of or failure to render professional services by you or any contractor or subcontractor working on your behalf, including the preparation or approval of maps, drawings, opinions, reports, surveys, designs, specifications or engineering services."

28. All work performed for the Native Village of Port Heiden by Boretide Consulting, LLC, Thor Kallestad and/or Greg Christensen constituted professional services within the meaning of this exclusion.

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29. The contract's pollution liability coverage does not apply for the additional reason that any "occurrence" alleged by the Village of Port Heiden occurred after the expiration of the Policy.

30. Coverage under the Rockhill Insurance Company Policy additionally does not apply to the extent that the work of Boretide Consulting, LLC, Thor Kallestad and/or Greg Christensen fell outside of the description of specified operations in the policy's endorsement which limits coverage to the following Description of Specified Operation(s): "Remediation Oversight performed for others by the named insured."

IV. REQUEST FOR DECLARATORY RELIEF

31. Rockhill Insurance Company is entitled to a judicial determination of its rights, status and legal obligations under its policy pursuant to 28 U.S.C. § 2201(a).

32. Rockhill Insurance Company seeks a judicial determination by this court, under 28 U.S.C. § 2201(a), that

(a) the allegations asserted by the Native Village of Port Heiden against Boretide Consulting, LLC, Thor Kallestad and Greg Christensen do not fall within the policy's coverage;

(b) Rockhill Insurance Company owes no duty to defend Boretide Consulting, LLC, Thor Kallestad or Greg Christensen in the Native Village of Port Heiden lawsuit;

(c) Rockhill Insurance Company owes no obligation to indemnify Boretide Consulting, LLC, Thor Kallestad and/or Greg Christensen for any amounts

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awarded to the Native Village of Port Heiden in the lawsuit, or for any amounts paid to settle such claims; and

(d) Rockhill Insurance Company is permitted to withdraw its defense of Boretide Consulting, LLC, Thor Kallestad and Greg Christensen in the Native Village of Port Heiden lawsuit.

PRAYER FOR RELIEF

WHEREFORE, Rockhill Insurance Company prays for relief as follows:

1. For a declaration that:

(a) the allegations asserted by the Native Village of Port Heiden against Boretide Consulting, LLC, Thor Kallestad and Greg Christensen do not fall within the policy's coverage;

(b) Rockhill Insurance Company owes no duty to defend Boretide Consulting, LLC, Thor Kallestad or Greg Christensen in the Native Village of Port Heiden lawsuit;

(c) Rockhill Insurance Company owes no obligation to indemnify Boretide Consulting, LLC, Thor Kallestad and/or Greg Christensen for any amounts awarded to the Native Village of Port Heiden in the lawsuit, or for any amounts paid to settle such claims; and

(d) Rockhill Insurance Company is permitted to withdraw its defense of Boretide Consulting, LLC, Thor Kallestad and Greg Christensen in the Native Village of Port Heiden lawsuit.

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2. For such costs and attorney's fees as are permitted by law or equity; and
3. For such other and further relief as this court deems just and proper.

DATED this 18th day of June, 2013, at Anchorage, Alaska.

RICHMOND & QUINN
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